

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	*
	*
PLAINTIFF,	*
	*
V.	* CASE NO. 2:05CR204-LSC
	*
BILLY R. MERCER, JR.,	*
	*
DEFENDANT.	*

**MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS
(BUT NOT FOR APPOINTMENT OF COUNSEL)**

Comes now defendant Billy R. Mercer, Jr., by counsel,
and submits the following:

1. Billy R. Mercer, Jr., the defendant, desires to
appeal to the U.S. Court of Appeals for the Eleventh Circuit
his criminal conviction, the judgment and sentence and all
adverse rulings thereto. See Notice of Appeal attached as
Exhibit 1.

2. The defendant was convicted by a jury on February
15, 2006 of one count of possession with intent to
distribute methamphetamine in violation of 21 U.S.C.
841(a)(1) and one count of use/carry/possession of a firearm
in furtherance of a drug trafficking crime in violation of
18 U.S.C. 924(c)(1).

3. The defendant was sentenced by this Honorable Court

on May 24, 2006, to a term of 292 months imprisonment therefore, an appeal is timely. Rule 4(b) and 24(a), F.R.A.P.

4. Although the defendant had undersigned counsel as retained counsel at trial, defendant is indigent as shown by the financial section of the May 16, 2006 revised presentence report (paragraph 50, page 13) and the affidavit attached as Exhibit 2 to this motion. Defendant has been incarcerated in the state or federal jail/prison system continuously since his arrest on or about October 10, 2004 and has no opportunity to earn income to pay for his appeal. Defendant is currently detained in the Montgomery, Alabama city jail. The only monies defendant has are such monies gifted to him by his father to his prison account. Defendant himself was unable to pay his attorney for trial and is unable to do so for appeal. Defendant's father, Billy Mercer, Sr. retained the services of undersigned counsel for defendant for the trial and now appeal, for which he is making monthly payments to counsel. Defendant's father has not paid and does not intend to pay for any expenses of an appeal. The fact that a third party paid for defendant's attorney fees should not strip an otherwise indigent defendant of that status. Defendant is unable to

pay the notice of appeal costs, the costs of the transcript of the trial and sentencing proceedings and other proceedings thereto, or the costs of the trial record.

6. There is attached to this motion as Exhibit 2 an affidavit of indigency in compliance with Rule 24(a)(1), F.R.A.P.¹ The first page of the affidavit contains the "issues" expected to be raised on appeal which are the following:

1. Defendant contends that the search and seizure conducted in his motel room was in violation of the Fourth amendment to the United States Constitution. The defendant has a privacy expectation in his room. United States v. Ramos, 12F3d 1019 (11th Circuit 1994). Therefore, defendant has standing to challenge admission of evidence seized in warrantless search of his premises. See United States v. Eyster, 948 F.2d 1196 (11th Cir. 1991).

2. Defendant contends that his statement to law enforcement was taken in violation of Miranda v. Arizona, 384 US 436 (1966) and was thus inadmissible in his prosecution.

3. Whether an Alabama felony conviction for driving under the influence of alcohol (DUI), constitutes a crime of violence under § 4B1.1 of the United States Sentencing Guidelines. (Case of first impression pending on appeal - U.S. v. McGill, 347 F.Supp. 2d 1210 (M.D. AL 2004)).

Defendant believes his issues to have merit.

¹ The affidavit has been redacted to exclude defendant's address and social security number as required by the E-Government Act of 2002, as amended August 2, 2004. The original will be filed separately with request to seal.

Wherefore, the premises considered, the defendant respectfully requests this Honorable Court to grant his leave to appeal in forma pauperis in this case for purposes of filing the notice of appeal attached as Exhibit 1; for a copy of the record and transcript in this case, and for any other costs and fees due for an appeal, and for any other relief the court deems equitable. Defendant specifically does not request appointment of counsel.

Respectfully submitted this the 26th day of May 2006.

s/Jeffery C. Duffey
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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Terry Moorer and John T. Harmon, AUSA, P.O. Box 197, Montgomery, AL 36101.

s /Jeffery C. Duffey
JEFFERY C. DUFFEY
Attorney for Billy Mercer, Jr.